IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1575 OF 2003

The State of Maharashtra ..Appellant

Vs.

Shailesh Nanasaheb Kadam
& Anr. ..Respondents

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Mr.M.S.Mhambare A.P.P. for Appellant-State
Mr.L.S.Gaikwad Advocate for Respondents

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : SEPT. 16,2005

P.C.

1. Heard the learned A.P.P. for the Appellant-State and the learned advocate for the respondents-original accused and perused the record produced.

2. The State has challenged the judgment and order dated 31.8.2002 passed by the learned Vth Addl.Sessions Judge, Satara in Sessions Case No.37 of 2002. By the said judgment and order, the learned Judge acquitted the respondents under

Sections 3(1)(10) of the Scheduled Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 (S.C.S.T.Act) and under Section 324 and 325 of IPC.

3. In the present case, as the offence was under the provisions of S.C.S.T.Act, it ought to have been investigated by an Officer not below the rank of Dy.Superintendent of Police who should be specifically appointed by the State of Maharashtra. The present case has been investigated by an Officer who was below the rank of Dy.Superintendent of Police. The investigation was conducted by P.W.6 A.P.I. Kashinth R.Salvi. In this view of the matter, the proceedings would be vitiated.

4. In respect of the claim of the complainant that he belonged to ‘Mang’ (Scheduled Caste) community, no documentary material has been produced in support of this claim. P.W.3 Kisan-complainant had sustained two injuries. In respect of these injuries the respondents have been convicted under Sections 324 and 325 of IPC. Dr.Patil P.W.8 who examined the injured witness, has not mentioned the

date and time of the examination of Kisan in the MLC Exh.32. In her cross-examination before the Court, Dr.Patil has not stated the nature of injuries. Further, she has admitted in her cross-examination that she has not mentioned the nature of injuries in the Certificate. Dr.Patil has further stated that injury can be possible by a single fall.

5. It is also pertinent to note that in the present case, there is delay in filing FIR. The incident had occurred on 8.1.2001 at 7 p.m. however, the FIR has been lodged on 9.1.2001 at 8 p.m. Thus, there is delay of more than 24 hours in lodging the FIR. No plausible explanation has been given by the prosecution for the delay in lodging the FIR. All these aspects have been taken into consideration by the learned Sessions Judge and thereafter, he has acquitted the accused persons.

6. It is well settled that if the view of acquittal could have been reasonably arrived at, then the mere circumstance that the appellate Court could have taken a different view, would be no

ground to interfere. In this connection, there is no dearth of authorities. To eschew prolixity, I am only referring to two of them i.e. **A.I.R. 1971 S.C. 66 (Khedu Mohton Vs. State of Bihar) and (2003) 1 S.C.C. 1 (C.Anthony Vs. K.G.Raghavan Nair).** In the case of **C.Anthony,** the Supreme Court has observed that unless findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal, substitute its findings merely because other contrary opinion was possible on the basis of the material on record. In my view, the view of acquittal was a reasonable and possible view.

7. In the circumstances, I find no merit in this appeal and the same is dismissed.

[SMT.V.K.TAHILRAMANI,J.]